

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA08-1229

KIMBERLY D. HARRIS

APPELLANT

V.

COLUMBIA SEWING COMPANY, INC.
AND STATE AUTOMOBILE MUTUAL
INSURANCE COMPANY

APPELLEES

Opinion Delivered April 1, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F702470]

AFFIRMED

RITA W. GRUBER, Judge

Kimberly D. Harris appeals from the September 19, 2008 opinion of the Workers' Compensation Commission denying her claim for a gradual onset injury to her right upper extremity. The Commission, adopting the opinion of the administrative law judge, based its decision upon its finding that Harris failed to prove that her injury arose out of and in the course of her employment. On appeal Harris contends that the Commission's denial of her claim is not supported by substantial evidence and is founded upon an improper interpretation of the law. Because the Commission's decision displays a substantial basis for the denial of this claim, we affirm.

Harris gave the following testimony at a hearing before the administrative law judge. Harris had basically been a stay-at-home mom before she applied to work for appellee

Columbia Sewing Company, Inc. but had fallen on hard times and for eight Mondays had earned \$20.00 to \$30.00 sweeping and “brushing up” a friend’s station in a beauty shop. She began working for Columbia in November 2006, using small scissors in her right hand to trim loose threads from military shirts, sometimes more than a hundred a shirt, with a goal of a hundred shirts a day. She developed soreness in her right hand in December and January but did not report it because she needed the job and did not want to complain. Harris saw Jakeeli Bennett, the nurse practitioner at the clinic of her primary care physician, Dr. Goins, concerning arthritis in her hips and back on February 1, 2007; Harris was prescribed a Medrol dose pack that day, and her prescription for Naprosyn was refilled. She had been treated at the clinic in 2003 for right-shoulder pain and since 2001 for her back and hip problems.

Harris further testified regarding events that began when she called the clinic in February 2007 because her hand was “really, really swollen” around the wrist. She said that she also had a big knot on her thumb at that time. She saw Bennett, the nurse practitioner, and told her that she (Harris) thought her job was causing the swelling. Bennett saw the swelling, applied an Ace bandage wrap, provided pain medication, gave Harris an off-work note for the previous and subsequent two-week periods, and told her she needed to file a workers’ compensation claim. Harris called the “secretary” Melinda at work to tell her about being taken off work; Melinda said the plant would be closed for about two weeks and suggested that perhaps Harris could come back then. After two weeks Harris was no better

and took the note to her boss, Mr. Bruce, telling him that she needed to file the workers' compensation claim. He never gave her the paperwork, and she filled out a claim that workers' compensation mailed to her after she phoned them. Harris said that her hand was still swollen around her wrist on the day of the hearing, the knot was still there, and knots also had come up toward the base of her thumb, which was also swollen.

Harris testified that her nine-year-old daughter was diagnosed with Tourette's Syndrome at the end of January 2007. Harris testified that her daughter's health problems interfered with Harris's work attendance but she did not start missing work because of her hand until it "went to swelling up." She said that only once did she work a forty-hour week at Columbia; that the last day she worked there was February 8, 2007; and that she was off work the second week in February because of a doctor's appointment for her daughter.

Key parts of Harris's testimony were contradicted by other evidence. Martha Taylor, who was Harris's manager, and Melinda McMullan, the office manager, testified that the plant was not closed the week of February 12 when Harris telephoned to express concerns about her absenteeism and to say that she was quitting work to care for her daughter. Taylor and McMullan testified that Harris did not tell them of any problems with her hand before her employment ceased. The employer's payroll records show that Harris missed work before February 12 because of a sick child, for personal reasons, for sickness, and due to factory lay-offs.

Neither the medical records nor testimony reveal any swelling or abnormalities at the

time Harris first sought treatment for her right hand on February 21, 2007, when her anti-inflammatory prescription was refilled and the Medrol dose pack was prescribed. Not until April 11 did nurse Bennett note swelling of the tendon at the base of Harris's right thumb. Bennett and Dr. Goins signed a questionnaire on June 1 stating that there were objective findings of the tendon swelling, and that the injury was related to Harris's work. But Dr. Goins testified that on August 1, the only time he saw Harris for her workers' compensation claim, he noted the swelling and knots along the tendon of her thumb; he could not say when the knots first developed, and he had found nothing in reviewing her records about their previous presence. Based upon the history he had been given, he concluded that Harris's tendinitis of the right-thumb extensor tendon was a repetitive-motion injury.

In reviewing a decision of the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm those findings if they are supported by substantial evidence, which is evidence a reasonable person might accept as adequate to support a conclusion. *Parker v. Comcast Cable Corp.*, 100 Ark. App. 400, 269 S.W.3d 391 (2007). We will not reverse the Commission's decision unless we are convinced that fair-minded people with the same facts before them could not have reached the same conclusions reached by the Commission. *Smith v. County Market/Southeast Foods*, 73 Ark. App. 333, 44 S.W.3d 737 (2001). In a case such as this one, where the Commission denies benefits because a claimant failed to meet his or her burden of proof, the appellate court will affirm if the

Commission's decision displays a substantial basis for the denial of relief. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Gaither Appliance v. Stewart*, 103 Ark. App. 276, ___ S.W.3d ___ (2008).

Here, the Commission determined that Harris's testimony lacked credibility. The Commission noted that her testimony was contradicted by other witnesses in several instances and that the swelling in her wrist did not appear until two months after she stopped working. The Commission found the two-month delay in the appearance of objective symptoms to be the most troubling aspect of her claim.

Harris relies upon *Roberts v. Whirlpool*, 102 Ark. App. 284, ___ S.W.3d ___ (2008), to argue that the Commission improperly disregarded the medical evidence from Dr. Goins's office. However, this case is distinguishable from *Roberts*. We said in *Roberts* that we could conceive of "circumstances in which the Commission might fairly reject a doctor's opinion that is based on the history provided by a claimant, such as when the Commission finds that the claimant's account is not worthy of belief." 102 Ark. App. at 286, ___ S.W.3d at ___. Here, the Commission stated that it did not completely disregard Dr. Goins's finding of causation, but it noted that his reasoning was based in part upon statements made by Harris. The Commission gave little weight to the portions of the medical evidence that were dependent upon information from Harris, based upon the Commission's finding regarding

credibility.

Harris also argues that the Commission must be reversed because, other than her employment, there is no reasonable explanation provided by Columbia for her injury. This argument improperly shifts the burden of proof to the employer, while it is the claimant's responsibility to prove that the injury arose as a result of her employment.

The Commission noted medical evidence that Harris was diagnosed with arthritis prior to working for Columbia, that her right-hand condition continued to deteriorate for several months after she ceased working, and that there were no objective findings of injury until after she stopped working. Harris cites *Fred's, Inc. v. Jefferson*, 361 Ark. 258, 206 S.W.3d 238 (2005), and *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000), to argue that her prescriptions for anti-inflammatory medication on February 21, 2007, constituted "objective medical findings" that swelling existed on that date. However, the Commission noted that Harris had been prescribed anti-inflammatory medication prior to her alleged injury for other conditions and that her own treating nurse testified that there were no objective findings of injury on February 21.

We hold that the Commission's opinion displays a substantial basis for its denial of Harris's claim. Thus, its decision is affirmed.

Affirmed.

ROBBINS and BAKER, JJ., agree.